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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUAN HERNANDEZ and
ROSENDO HERNANDEZ,

Plaintiffs,

vs.

REYNALDO GUEVARA, et al.,

Defendants.

No. 23 CV 1737

Chicago, Illinois
November 14, 2024
9:53 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - HEARING
BEFORE THE HONORABLE JEREMY C. DANIEL

APPEARANCES:

For the Plaintiffs:

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Joseph Miedzianowski:

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For the Defendant
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09:53:54 1 THE CLERK: 23 C 1737, Hernandez, et al., versus
09:53:59 2 Guevara, et al., for motion hearing.

09:54:09 3 MR. STARR: Good morning, Your Honor. Sean Starr,
09:54:11 4 S-t-a-r-r S-e-a-n, on behalf of plaintiffs, Juan and Rosendo
09:54:17 5 Hernandez.

09:54:17 6 THE COURT: Good morning.

09:54:19 7 MS. ROMELFANGER: Good morning, Your Honor. Alison
09:54:26 8 Romelfanger on behalf of defendants, Bemis, Biebel, and
09:54:30 9 Special Representative Yanow.

09:54:32 10 MS. GONZALEZ: Good morning, Your Honor. Krystal
09:54:34 11 Gonzalez on behalf of defendant, Guevara.

09:54:37 12 MS. KRAUCHUN: Good morning, Your Honor. Kelly
09:54:39 13 Krauchun on behalf of the City of Chicago.

09:54:41 14 MR. GAINER: Good morning. Brian Gainer on behalf of
09:54:43 15 defendant, Miedzianowski.

09:54:45 16 THE COURT: Good morning, everyone.

09:54:47 17 Lots of things to run through this morning.

09:54:53 18 I don't think I need to address the docket entry 121,
09:54:57 19 the motion to produce agreed upon documents, because I feel
09:55:01 20 like I just got an update, and then you are supposed to be
09:55:04 21 back in December on that one.

09:55:07 22 I have got the motion to quash officers' subpoenas,
09:55:11 23 docket entry 126. I have reviewed the filings and I am going
09:55:15 24 to grant it in part and deny it in part.

09:55:19 25 Generally, as to the motions, I think the officers

09:55:23 1 have shown that they are potentially relevant to the issues in
09:55:27 2 the case. I think everyone understands discovery is broad
09:55:30 3 with respect to the privacy implications for the conversations
09:55:34 4 that they seek. I find it hard to find a reason to afford a
09:55:39 5 reasonable expectation of any privacy when you are told that
09:55:45 6 the calls are being recorded. So those subpoenas can be
09:55:48 7 issued with respect to that.

09:55:54 8 The grant, however, comes with respect to attorney
09:55:57 9 calls. I understand you have cited another District Court
09:55:59 10 case essentially saying that calls with attorneys that are
09:56:03 11 recorded require other -- or can be turned over, but I view
09:56:12 12 that as close to sacrosanct, and you are just not going to get
09:56:18 13 that absence and additional showing. I haven't seen a Seventh
09:56:27 14 Circuit case that goes that way. I don't know whether there
09:56:31 15 were any alternatives. And so this will just follow the
09:56:34 16 typical route where if calls are withheld because they are
09:56:38 17 with attorneys, produce a privilege log and substantiate it
09:56:43 18 and you just don't get it.

09:56:44 19 So that is 126, everything but the attorney/client
09:56:49 20 calls.

09:56:51 21 MR. STARR: Could I ask a question, Your Honor?

09:56:51 22 THE COURT: Sure.

09:56:53 23 MR. STARR: Does that include the written
09:56:54 24 communications as well that they were seeking?

09:56:57 25 THE COURT: With counsel?

09:56:57 1 MR. STARR: No, with all the people they listed in
09:57:00 2 their subpoenas that they were seeking, like electronic and
09:57:03 3 written communications that they may or may not have.

09:57:08 4 THE COURT: Yes, that extends to that as well.

09:57:10 5 MR. STARR: Is there any time limitation, timeframe
09:57:13 6 limitation, that the Court is putting on their subpoenas in
09:57:17 7 terms of what they are able to get from IDOC? And I apologize
09:57:21 8 about my voice, I woke up with this.

09:57:23 9 THE COURT: No problem.

09:57:24 10 MR. STARR: Sorry, I usually have a better voice.

09:57:26 11 THE COURT: I would imagine that anything
09:57:28 12 post-conviction is relevant, if he is talking about his
09:57:31 13 conviction.

09:57:33 14 MR. STARR: So is the Court's order that plaintiffs
09:57:36 15 should review the calls and produce anything that fits into
09:57:39 16 that category or -- they were seeking an incredibly wide
09:57:44 17 swath, and in our reply, and actually Ms. Romelfanger and I
09:57:49 18 talked about this briefly this morning, that --

09:57:49 19 THE COURT: My order is to produce relevant
09:57:52 20 documents. Whether you want to look at them before you
09:57:54 21 produce them, I can't tell you how to run your shop.

09:57:57 22 MR. STARR: Okay. So does plaintiff have an
09:57:59 23 opportunity to -- because there were a lot of calls that we
09:58:01 24 think, and I think the defendants agree in their motion, are
09:58:04 25 not going to be relevant, calls that don't effect damages,

09:58:08 1 calls that have nothing to do with the post-conviction
09:58:10 2 petition or proceedings. If there are private calls that
09:58:13 3 these plaintiffs had with their loved ones that don't touch on
09:58:18 4 those issues, are we able to review those first before turning
09:58:22 5 them over?

09:58:22 6 THE COURT: What is your position?

09:58:23 7 MS. ROMELFANGER: Your Honor, we didn't ask for a
09:58:25 8 single call with plaintiffs' family members. As we laid out
09:58:28 9 in our motion, they were all witnesses he called in his
09:58:31 10 criminal trial, witnesses that were in his post-conviction
09:58:34 11 proceedings, or their witnesses with the only link being
09:58:39 12 defendant Guevara, because they are all either 404(b)
09:58:42 13 witnesses or they also have lawsuits against Guevara, with the
09:58:48 14 exception I think of Matt Sobran (phonetic) and one other who
09:58:52 15 also do have reverse conviction cases.

09:58:54 16 So, we didn't ask for a single call or communication
09:58:58 17 with family members that would contain those private
09:59:02 18 communications.

09:59:02 19 THE COURT: Right, but I think his concern is a bit
09:59:04 20 broader. He wants to narrow it to a universe of
09:59:08 21 communications potentially related to the case.

09:59:12 22 MS. ROMELFANGER: Your Honor, I would be happy to
09:59:14 23 narrow my subpoena to ask IDOC to narrow the electronic
09:59:18 24 communications to just stuff about this case. I am happy to
09:59:22 25 do that to IDOC.

09:59:23 1 MR. STARR: I don't know how IDOC would possibly be
09:59:26 2 able to do that. They can't even tell us the quantity and
09:59:30 3 they certainly can't tell us the quality.

09:59:36 4 THE COURT: So the hesitation I have in allowing you
09:59:38 5 to take the first pass, not to slight you in any way, but I
09:59:43 6 understand the skepticism of opposing counsel saying, why
09:59:51 7 should they get to decide what is relevant and what is not.
09:59:51 8 It seems the appropriate mechanism to handle this would be to
09:59:53 9 conduct your privilege review as you normally would, but then
09:59:57 10 if documents go somewhere or aren't relevant to the case, you
10:00:00 11 would just seek to exclude them later.

10:00:04 12 MR. STARR: Documents and also communications, it is
10:00:08 13 our position, that oral communications, phone calls, would
10:00:10 14 fall into that category.

10:00:11 15 And if I misspoke and said family members earlier, I
10:00:14 16 meant loved ones. I mean, there are certainly calls with
10:00:16 17 ex-girlfriends and close family friends that maybe are not by
10:00:20 18 blood a relative but are certainly considered to be loved ones
10:00:23 19 of the plaintiffs.

10:00:24 20 THE COURT: You can review for privilege or work
10:00:26 21 product or any other privilege, but you won't do the relevance
10:00:31 22 review. You can object to the breadth of the subpoena but
10:00:37 23 really that is IDOC's objection since they are the ones
10:00:42 24 producing.

10:00:42 25 Does that answer your question?

10:00:43 1 MR. STARR: I believe so.

10:00:44 2 So we will get them first and review them for work
10:00:47 3 product and --

10:00:48 4 THE COURT: No.

10:00:49 5 If you think there is work product, but how can there
10:00:52 6 be work product if there is not an attorney in the
10:00:55 7 communication.

10:00:56 8 MR. STARR: I understand that, and I think you have
10:00:59 9 eliminated the access to the attorney calls if I understood
10:01:03 10 your ruling.

10:01:03 11 THE COURT: Correct.

10:01:04 12 MR. STARR: It is plaintiffs' position that the sheer
10:01:06 13 volume of calls, there is certainly going to be -- the vast
10:01:10 14 majority of calls will have no relevance whatsoever, but I
10:01:14 15 understand your order, Your Honor.

10:01:16 16 THE COURT: All right.

10:01:16 17 Then I have got 144, the motion to compel defendant
10:01:22 18 Miedzianowski to sit for a deposition.

10:01:27 19 MR. GAINER: Yes, sir.

10:01:28 20 THE COURT: Do you have a response?

10:01:29 21 MR. GAINER: I do.

10:01:30 22 My response is, as my response was to counsel when we
10:01:32 23 talked about this, I am trying to be pragmatic here.

10:01:36 24 Mr. Miedzianowski, unlike most defendants, or maybe
10:01:41 25 all defendants in these types of cases, is in prison for life.

10:01:45 1 There is very little leverage I have over him, or counsel has
10:01:49 2 over him, or really anyone has over him, to force him to do
10:01:54 3 anything, unfortunately.

10:01:56 4 THE COURT: That is not true entirely.

10:01:58 5 MR. GAINER: It is not true entirely.

10:02:00 6 THE COURT: He can be forced to sit in a room and if
10:02:03 7 he chooses to refuse to answer a question then we get into the
10:02:07 8 area of there is no way to force him or incentivize him, but
10:02:11 9 he can be produced for a deposition.

10:02:13 10 MR. GAINER: And we are not objecting to producing
10:02:16 11 him for his deposition. I want that to be very clear, and I
10:02:20 12 think it should be clear from my emails.

10:02:21 13 Mr. Miedzianowski is ready to sit for his deposition.
10:02:24 14 The sole factor hanging this up is video. He does not want to
10:02:29 15 be on video. The most that I can share with the Court about
10:02:34 16 his reasons is that he is concerned about publicity associated
10:02:38 17 with a videotaped deposition. I explained it to counsel
10:02:43 18 multiple times, and we talked about this. He is ready to
10:02:48 19 testify, and he will testify for the seven hours required by
10:02:52 20 the rules. He is literally a captive audience. He will come
10:02:59 21 out of his cell to testify if it is a deposition transcribed
10:03:04 22 by a court reporter. The video is the issue.

10:03:07 23 And if the true goal is to get his testimony, which
10:03:10 24 counsel has told me it is, then we can do that, it is the
10:03:15 25 video that is the issue.

10:03:17 1 MR. STARR: I will begin by saying certainly I think
10:03:20 2 in our motion I made it clear that Mr. Gainer said he would
10:03:23 3 sit for a deposition, it was just the video issue. We are
10:03:27 4 here before Your Honor today to address that.

10:03:28 5 Our concern, as we articulated I think in our motion,
10:03:32 6 is this is a 71 year old man that lives in not the most
10:03:36 7 healthy environment, this is a case that is multi-faceted and
10:03:40 8 has a lot of moving parts, multiple plaintiffs, multiple
10:03:43 9 defendants, it will be a while before we sit for a trial, I
10:03:47 10 believe. I can't be certain that he will be here.

10:03:50 11 So we want to take a videotaped deposition, which we
10:03:54 12 think is our right, and we think the Court has already ordered
10:03:56 13 we have the right to do, in order to preserve his testimony in
10:03:58 14 its most complete form. Written testimony, you know, no
10:04:04 15 concerns at all about court reporters' efforts to do their
10:04:08 16 jobs correctly, but a videotape is going to tell a further
10:04:12 17 tale. There are certainly other ways that we communicate as
10:04:14 18 human beings that go beyond the words that we say that are
10:04:16 19 then written down in a court reporter's court reporting
10:04:18 20 statement.

10:04:19 21 So, it is important for us to have it videotaped.
10:04:21 22 What if he doesn't want to come to trial and refuses to come
10:04:24 23 and testify at trial? We want a videotape that we can show to
10:04:28 24 the jury and if we have to impeach him at the trial or he
10:04:31 25 doesn't show up. We think that is within our right and what

10:04:34 1 we are seeking. We think this Court has the ability to order
10:04:38 2 that. And then if we go and sit in a room and he refuses to
10:04:41 3 testify we will have to come back and address it at that
10:04:45 4 point.

10:04:45 5 MR. GAINER: May I say two things in response to
10:04:47 6 that, Judge?

10:04:48 7 THE COURT: No.

10:04:52 8 I am going to exercise my discretion and not allow
10:04:55 9 the videotaped deposition. I am sympathetic to the security
10:05:02 10 risk identified concerning the publicity by -- surrounding
10:05:11 11 something like this. Essentially this case is -- this
10:05:14 12 defendant put people in jail wrongfully, and that defendant is
10:05:21 13 in jail. That probably is not something that is -- that
10:05:27 14 enhances his safety, should that resurface. I understand this
10:05:33 15 his case received a lot of publicity, years ago, but I see
10:05:38 16 that as an unnecessary risk to the defendant's well-being.

10:05:44 17 So you can take the deposition, but you can't
10:05:46 18 videotape it.

10:05:47 19 MR. STARR: Your Honor, can I just ask a question?
10:05:49 20 And this is alluded to in the motion.

10:05:51 21 Isn't there a way that we could enter a protective
10:05:55 22 order where the videotape becomes attorney's eyes only?

10:05:58 23 THE COURT: But then you come to trial and he doesn't
10:06:00 24 appear and you want to put the videotape up. And so no. You
10:06:04 25 can preserve the testimony through a written transcript, and

10:06:08 1 then you can read that transcript into the record.

10:06:11 2 MR. GAINER: Thank you, Judge.

10:06:18 3 THE COURT: The next one is the -- and hopefully that
10:06:21 4 extended sigh dealt with your hoarse voice and not -- -

10:06:24 5 MR. STARR: It did, Your Honor, certainly. And I
10:06:26 6 apologize.

10:06:27 7 THE COURT: Okay.

10:06:27 8 The next motion is docket entry 148, a motion to
10:06:32 9 extend fact discovery. There is a motion to extend the
10:06:36 10 timeline to respond, that is docket entry 150. I will grant
10:06:40 11 150. I have reviewed the motion for the extension of fact
10:06:47 12 discovery and the response. I am going to grant the
10:06:51 13 extension. It seems like both sides are in favor of it. And
10:06:55 14 so discovery will be extended to March 14th, 2025.

10:07:02 15 I am sympathetic to plaintiffs' concerns that are
10:07:06 16 concerning new discovery, so the deadline to issue any
10:07:10 17 additional written discovery, including document subpoenas,
10:07:14 18 will be December 19th, 2024. I understand that there will be
10:07:21 19 instances where information is revealed in a deposition that
10:07:26 20 leads to other sources of written discovery, but that will be
10:07:30 21 limited and the parties will need to establish justification
10:07:33 22 on why they could not have asked for it before, in other
10:07:37 23 words, it is news to us that we learned in the deposition.

10:07:41 24 There will be no further extensions of fact
10:07:44 25 discovery absent exceptional circumstances and a showing of

10:07:48 1 good cause, or good use, of the extension you are getting now.

10:07:53 2 So that will be laid out in a minute order, but March

10:07:57 3 14th, fact discovery closes.

10:07:59 4 MR. GAINER: Thank you.

10:08:01 5 MS. ROMELFANGER: Thank you, Judge.

10:08:02 6 THE COURT: I think that takes care of all the

10:08:04 7 outstanding issues with the exception of 121, which we will

10:08:08 8 come back in December and work on.

10:08:10 9 MR. STARR: And regarding 121, which I believe is the

10:08:13 10 document production from the City, since the last time we were

10:08:17 11 here I believe we only got a handful of documents, I think it

10:08:20 12 is under 50 pages of documents, so we are still waiting and we

10:08:23 13 have followed up with the City.

10:08:25 14 THE COURT: Okay.

10:08:25 15 MS. KRAUCHUN: All I can say, Judge, is we continue

10:08:27 16 to produce as we represented to the Court at the last court

10:08:30 17 hearing, and we expect to have that done by December.

10:08:33 18 THE COURT: All right.

10:08:34 19 Thank you.

10:08:35 20 ALL RESPOND: Thank you.

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C E R T I F I C A T E

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

/s/Krista Burgeson, CSR, RMR, CRR
Federal Official Court Reporter

November 20, 2024
Date